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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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LOCKHEED MARTIN TRANSPORTATION SECURITY
SOLUTIONS, AN OPERATING UNIT OF LOCKHEED
MARTIN CORPORATION,

Plaintiff,

-against- Civil Action No.
09 CIV 4077
(PGG) (GWG)

MTA CAPITAL CONSTRUCTION COMPANY and
METROPOLITAN TRANSPORTATION AUTHORITY,

Defendants.

- - - - - x

TRAVELERS CASUALTY AND SURETY COMPANY OF
AMERICA, FEDERAL INSURANCE COMPANY and
SAFECO INSURANCE COMPANY OF AMERICA,

Plaintiffs,

-against- 09 CV 6033
(PGG) (GWG)

METROPOLITAN TRANSPORTATION AUTHORITY, MTA
CAPITAL CONSTRUCTION COMPANY, and NEW YORK
CITY TRANSIT AUTHORITY,

Defendants.

- - - - - x

Oral deposition of 30(b)(6) witness, SEAN
RYAN, taken pursuant to notice, was held at
the law offices of DUANE MORRIS LLP, 1540
Broadway, New York, New York, commencing
April 17, 2012, 10:03 a.m., on the above
date, before Leslie Fagin, a Court Reporter
and Notary Public in the State of New York.

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1
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1
2 IT IS HEREBY STIPULATED AND AGREED,
3 by and between counsel for the
4 respective parties hereto, that the
5 filing, sealing and certification of the
6 within deposition shall be and the same
7 are hereby waived;

8 IT IS FURTHER STIPULATED AND AGREED
9 that all objections, except as to the
10 form of the question, shall be reserved
11 to the time of the trial;

12 IT IS FURTHER STIPULATED AND AGREED
13 that the within deposition may be signed
14 before any Notary Public with the same
15 force and effect as if signed and sworn
16 to before the Court.
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1 SEAN RYAN

2 (Notice of deposition marked Ryan
3 Exhibit 1 for identification.)

4 S E A N R Y A N, called as a
5 witness, having been duly sworn by a Notary
6 Public, was examined and testified as
7 follows:

8 EXAMINATION BY
9 MS. JESKIE:

10 Q. Good morning, Mr. Ryan, my name is
11 Sandra Jeskie and I'm counsel for Lockheed
12 Martin and I will be asking you questions
13 about the IEES-C3 project. This is Brian
14 Kantar, who is representing the sureties, is
15 also here with me.

16 Have you ever had your deposition
17 taken before?

18 A. Yes.

19 Q. When?

20 A. A few times over the years, I
21 suppose probably most recently 18 to 24
22 months ago.

23 Q. What was that in connection with?

24 A. That was a contract matter for a --
25 involving a previous employer I had.

1 SEAN RYAN

2 Metro-North did not support Capital
3 Construction's approval of the PDR documents?

4 A. Correct.

5 Q. Why?

6 A. As I said, in general terms, the
7 preliminary design was not constructable in
8 Metro-North's view or not detailed enough to
9 be constructable in Metro-North's view.

10 Q. Did Metro-North provide its support
11 for the approval of the CDR documents
12 prepared by Lockheed Martin?

13 A. I don't remember. At the moment, I
14 don't recall Metro-North's position on CDR
15 when we got to that point in the project.

16 Q. So you don't know, as you sit here
17 today, whether Metro-North approved the CDR
18 documents?

19 A. I don't recall, I'm sorry.

20 Q. To the best of your knowledge, did
21 Capital Construction approve Lockheed
22 Martin's CDR documents?

23 A. I'm not certain.

24 Q. Do you have any reason to believe
25 that Capital Construction did not approve

1 SEAN RYAN

2 those documents, I mean, Lockheed Martin
3 couldn't have gone forward, correct?

4 MS. HECHTKOPF: Objection.

5 A. I don't know, as I say, I
6 apologize, I just don't recall the status of
7 the CDR approval at the moment.

8 Q. You had said in connection with the
9 PDR documents that Capital Construction had
10 no authority to overrule Metro-North. What
11 did you mean by that?

12 MS. HECHTKOPF: Objection.

13 A. Well, the relationship between
14 Metro-North and the Capital Construction
15 Company is not one of one having authority
16 over the other. They're parallel
17 organizations but in the end, Capital
18 Construction Company managed the project and
19 managed the contract.

20 Q. So did Capital Construction then,
21 in connection with this project, have the
22 ultimate authority to make a decision on
23 behalf of the agency, whether or not the
24 agency agreed with that decision?

25 MS. HECHTKOPF: Objection.

1 SEAN RYAN

2 A. Ultimate authority, I would say no.

3 Q. Did anyone have ultimate authority
4 over Metro-North in connection with this
5 project?

6 A. Ultimately the chair always has
7 that authority.

8 Q. Who is the chair, when you say
9 that, are they with headquarters, not Capital
10 Construction?

11 A. Correct.

12 Q. Do you know if the chair or anyone
13 at headquarters ever came in and made
14 decisions in connection with the project?

15 A. That's the whole question.

16 Q. Yes.

17 A. You know, I don't know what the
18 chair's and there were various people in that
19 role, I don't know what the chair's
20 decision-making process was vis-à-vis this
21 project. But basically Mr. Morange was the
22 chair's representative.

23 Q. Did Mr. Morange have authority to
24 overrule an agency's decision, for example?

25 MS. HECHTKOPF: Objection.

1 SEAN RYAN

2 A. He would have -- I can't tell you
3 specifically what his authority level was in
4 that regard. But what would have happened in
5 the dispute and frankly, I cannot think of a
6 single example of this, but to answer your
7 question, what would have happened is Mr.
8 Morange would have had a conversation with
9 the agency, in our case, it would have been
10 the Metro-North president, Peter Canido.

11 Q. Ultimately, could Mr. Morange
12 change a decision of the Metro-North
13 president in connection with this project?

14 MS. HECHTKOPF: Objection.

15 A. No, the Metro-North president
16 reports to the chair as did Mr. Morange.

17 Again to be clear, I cannot think
18 of an instance that rose to that level but
19 you asked about the process and that's the
20 process.

21 Q. To the best of Metro-North's
22 understanding, the only person who could
23 overrule an agency decision would be then the
24 chair at headquarters and that would be it,
25 not its representative?

1 SEAN RYAN

2 project coordination at the highest level was
3 done at the steering committee level. That's
4 really it, in terms of new processes, not
5 that I can think of.

6 Q. During the steering committee
7 meetings, were there ever instances in which
8 agencies disagreed on how to move forward?

9 A. Certainly.

10 Q. And how would that be addressed?

11 A. Mr. Morange would have mediated any
12 disagreements there and we would have left in
13 agreement.

14 Q. Mr. Morange did not have the
15 authority, though, to make a decision over
16 the objections of the agency, right?

17 MS. HECHTKOPF: Objection.

18 A. No, but as I said, I cannot recall
19 an instance that rose to the level where it
20 had to go beyond the steering committee
21 level. But Mr. Morange would have mediated
22 any disagreement that occurred at that level
23 among the agencies.

24 Q. So to the best of your
25 recollection, there was always a consensus

1 SEAN RYAN

2 Q. Are you familiar with the test and
3 evaluation master plan which is often
4 referred to as the TEMP?

5 A. I and.

6 Q. Was it Metro-North's understanding
7 that that document governed the testing
8 program?

9 MS. HECHTKOPF: Objection.

10 A. Yes, that document governed the
11 testing.

12 Q. Did Metro-North have any input into
13 the creation of the TEMP?

14 A. No.

15 Q. Did it have any input, in other
16 words, making comments on drafts of the TEMP
17 at all?

18 MS. HECHTKOPF: Objection.

19 A. I'm not sure if the creation of the
20 TEMP itself went through the normal document
21 submission and review process, so I can't
22 remember that specifically, but I would say
23 that if it did, then Metro-North had an
24 opportunity to provide comments on it. I do
25 not remember specifically that document going

1 SEAN RYAN

2 A. Yes.

3 Q. At what point did the project
4 change from being called the IESS-C3 project
5 to the AAESP project? It does not roll off
6 the tongue.

7 A. No, it does not, I would have come
8 up with a much better term. But when the
9 IESS project ended and was no more, a name
10 was needed for the balance of the work and so
11 for some reason this is what was decided.

12 Q. So it was decided shortly after
13 termination then?

14 A. Yes.

15 Q. Who else would participate in the
16 testing that we were talking about?

17 A. From Metro-North?

18 Q. I think you just said Ms. Panzer
19 and perhaps one other person from Metro-North
20 but, just generally, who else would
21 participate?

22 A. I can really only guess at that. I
23 don't know who the other agencies assigned to
24 represent them at the testing.

25 Q. What was Metro-North's

1 SEAN RYAN

2 would be assigned?

3 A. I can't recite it for you verbatim,
4 but it has to do with the degree of severity
5 of the variance.

6 Q. Would that be determined by looking
7 at the TEMP?

8 A. Yes.

9 Q. Let me rephrase and make it a
10 little bit easier. Was there any requirement
11 for the number of passed FAT tests in order
12 to move forward in the testing process?

13 A. I'm not aware of such a
14 requirement.

15 Q. Let me show you what's been
16 previously marked as Martinez 13. Which is
17 an email from Linda Martinez to April Panzer
18 dated December 8, 2008. Would you take a
19 moment to review that?

20 Have you had a chance to review
21 Martinez 13?

22 A. I have.

23 Q. Mr. Ryan, does this refresh your
24 recollection that there were private
25 communications between Ms. Panzer on behalf

1 SEAN RYAN

2 And so, Ms. Panzer, anyway, is fastidious and
3 was interested in accurately recording the
4 status of the test results. And I don't know
5 what's in the hearts of my MTACC colleagues
6 but I suppose that they wanted to be more
7 flexible in this regard in order to move this
8 project ahead.

9 Q. How did Capital Construction convey
10 that they wanted Metro-North to be more
11 flexible in that regard?

12 MS. HECHTKOPF: Objection.

13 A. Well, based on what I'm reading in
14 the exhibit here, Ms. Panzer received this
15 message from someone who said on page 2, she
16 says, We were told that we had to push on. I
17 infer that she is referring to somebody from
18 MTACC. And then Ms. Martinez cites, As you
19 said, push-ahead mentality.

20 Q. I'm asking you on behalf of
21 Metro-North, as you sit here today, was it
22 your understanding that Capital Construction
23 had conveyed this sense to the agencies,
24 particularly Metro-North, that they needed to
25 be a little more flexible in the

1 SEAN RYAN

2 interpretation of requirements in order to
3 get tests passed?

4 A. Yes.

5 Q. How did they convey that message?

6 A. Again, I cannot recall the specific
7 conversations but I know that there were
8 conversations at the steering committee level
9 about this topic. So agencies expressed
10 their viewpoint, as expressed here by Ms.
11 Panzer and Ms. Martinez for that matter, and
12 Capital company expressed their viewpoint.
13 And those conversations happened at the
14 steering committee.

15 Q. I understand that you can't
16 remember specifics but, in general, what was
17 the message being conveyed by Metro-North and
18 the other agencies concerning the
19 interpretation of requirements and the
20 testing status, on this issue?

21 A. Be more flexible, they'll get it
22 fixed, everything will be fine, we need to
23 move ahead.

24 Q. What was intended, as you
25 understand it, on behalf of Metro-North when

1 SEAN RYAN

2 you hear a statement of be more flexible?

3 A. That we shouldn't be as rigorous in
4 our application of the pass or fail criteria.

5 Q. What was the reaction of
6 Metro-North and the other agencies at those
7 meetings to this kind of statement?

8 A. Again, I can't speak for the other
9 agencies.

10 Q. Okay.

11 A. Metro-North always did everything
12 it could to support the project and to
13 facilitate progress on the project. But in
14 Metro-North's estimation, a test either
15 passed or it didn't. And if it didn't, it
16 should be reported -- I would like to modify
17 my response.

18 Metro-North believed that we should
19 apply the proper test result status to the
20 tests and if that -- if it passed, then
21 that's a pass, if it failed, then that's a
22 failure, and if it was something in-between,
23 then it should be statused correctly.

24 Q. Just trying to understand your
25 response, was that viewed as essentially a

1 SEAN RYAN

2 disagreement with the instructions that
3 Capital Construction were providing in terms
4 of being flexible?

5 A. I suppose we disagreed on how we
6 should interpret the test criteria and
7 here -- this is a case that illustrates the
8 different objectives that Capital company
9 had, the Capital company's objectives and how
10 they differed from the agencies' objectives.

11 Q. What were the Capital
12 Construction's objectives, as you just
13 mentioned?

14 MS. HECHTKOPF: Objection.

15 A. You know, all of the agencies and
16 the Capital company's objectives were aligned
17 in terms of providing, getting the project
18 completed, delivered on time and on budget
19 and all those sorts of standard things.

20 But beyond that, the agencies would
21 have to live with these systems for a long
22 time and the Capital company had a lot of
23 pressure to bring the project in on time.
24 And once this project is done, they would be
25 moving on to another project.

1 SEAN RYAN

2 Q. Where was Capital Construction
3 getting the pressure to bring the project in
4 on time?

5 MS. HECHTKOPF: Objection.

6 A. Well, from MTA headquarters, from
7 headquarters.

8 Q. So would it be fair to say that
9 Metro-North and Capital Construction
10 disagreed, then, in connection with the
11 interpretation of the test criteria?

12 MS. HECHTKOPF: Objection.

13 Q. And how to -- whether to pass or
14 fail tests?

15 MS. HECHTKOPF: Objection.

16 A. I would say that we disagreed in
17 the application of the different status
18 levels.

19 Q. As a result of these conversations
20 with Capital Construction, did Metro-North
21 make any changes in the way it viewed the
22 requirements and test pass/fails, or did they
23 continue to strictly interpret the
24 requirements and the test criteria?

25 A. I don't recall that we changed

1 SEAN RYAN

2 course in the way we handled the test
3 criteria.

4 Q. You had mentioned that these were
5 topics that had come up at the steering
6 committee meeting, is that right?

7 A. Yes.

8 Q. And you participated in those
9 steering committee meetings?

10 A. Yes.

11 Q. What were the other agencies'
12 response in connection with this request by
13 Capital Construction to be more flexible in
14 terms of the requirements and the test
15 status?

16 A. I don't remember the other
17 agencies' position on this.

18 Q. Do you remember discussion by the
19 other agencies about this?

20 A. Yes. So I will warn you in
21 advance, again, I cannot give you a specific
22 example but I remember in general terms,
23 generally, the agencies were aligned on this
24 issue.

25 Q. And when you say aligned, they were

1 SEAN RYAN

2 from a process point of view?

3 MS. HECHTKOPF: Objection.

4 Q. Did you think it was fair,
5 reasonable?

6 MS. HECHTKOPF: Objection.

7 A. As I said earlier, our view was
8 that the processes were not strictly adhered
9 to.

10 Q. What processes were you referring
11 to?

12 A. Again, the issues that call for
13 regression testing, issues that resulted in a
14 configuration change of some sort, mid-test
15 without retesting.

16 Q. So the concerns that you were
17 referencing are related to regression testing
18 only?

19 A. The specific examples I'm recalling
20 now are related to regression testing. But,
21 again, if I thought about it some more, I may
22 come up with other examples. But that's what
23 I recall now.

24 Q. What's your understanding of what a
25 business rule is?

1 SEAN RYAN

2 A. A business rule is a -- business
3 rules are procedural steps that lay out the
4 way -- in the context of this project,
5 anyway, they lay out the way system operators
6 respond to alarms and incidents and
7 system-generated messages.

8 Q. Did the agency develop its own
9 business rules for the project?

10 A. No, there were business rules
11 development workshops. Again, this predates
12 me. There were business rule development
13 workshops that were facilitated by one of the
14 consultants on the project, I don't recall
15 who it was.

16 Q. It wasn't Lockheed Martin's role to
17 develop business rules, was it?

18 MS. HECHTKOPF: Objection.

19 A. I believe it was one of the other
20 consultants on the project.

21 Q. Did Metro-North participate in what
22 was called the operational readiness
23 workshop?

24 A. Yes.

25 Q. Is that often referred to as the

1 SEAN RYAN

2 ORW as well?

3 A. I suppose.

4 Q. And what did Metro-North do in
5 connection with the ORW?

6 A. We attended the ORW, we observed
7 the demonstration there of the systems, I
8 believe it was held at Long Island City.

9 Q. What was the purpose of the ORW?

10 A. To demonstrate that the system
11 operated properly and was ready to execute, I
12 suppose, execute the business rules. I think
13 there were canned scenarios that walked
14 through business rule execution.

15 Q. Who on behalf of Metro-North
16 attended the ORW?

17 A. April Panzer, primarily. I was
18 there. I don't recall who else.

19 Q. What was Metro-North's view of the
20 outcome of the ORW?

21 A. It was the view was dim,
22 demonstration was poor.

23 Q. Why was the demonstration poor?

24 A. The systems did not perform as
25 intended.

1 SEAN RYAN

2 Q. Did Metro-North express that
3 concern at the ORW?

4 A. Everyone did.

5 Q. To who?

6 A. Well, formally, I suppose, to the
7 MTACC personnel.

8 Q. Did you have anything positive to
9 say about the ORW?

10 A. Lunch was provided.

11 Q. Is that it?

12 A. That's all I recall.

13 Q. Are you familiar with the term
14 showstoppers?

15 A. Yes.

16 Q. What are the showstoppers?

17 A. Well that's a complicated question.
18 Showstoppers were the product of a process
19 called the path forward and there was a
20 committee was formed called the path forward
21 committee. The path forward committee
22 evaluated the status of all the test results
23 and made a determination, made determinations
24 about classifications of many of the test
25 results.

1 SEAN RYAN

2 And one of the results of that
3 committee's efforts was identifying for
4 so-called showstoppers. They were data
5 segmentation, the provision of a maintenance
6 mode. As I said earlier, there were other
7 modes that didn't function either. The
8 provision of Lenel client software on every
9 workstation and a function called
10 publish-subscribe which was a communications
11 functionality.

12 Q. What was the path forward
13 committee?

14 A. What was the path forward
15 committee? The path forward committee was an
16 effort to try to scrutinize the current state
17 of performance of the system, based on test
18 results and find a way to establish sort of a
19 stepping stone stage where we could work
20 together with Lockheed Martin to develop a
21 very basic level of functionality.

22 Q. Who participated in the path
23 forward committee?

24 A. Path forward committee was headed
25 by Whiel Hibri. I represented Metro-North,

1 SEAN RYAN

2 Lisa Schreiber represented New York City
3 transit, Dave Horn from Carter-Burgess was
4 there. I won't be able to give you the
5 complete list, I'm pretty sure John Hyland
6 from Long Island Railroad, there are a number
7 of other people, Terry Feters.

8 Q. Were all the agencies represented
9 ultimately?

10 A. Yes.

11 Q. Was the path forward committee a
12 process that came out of the direction by
13 Capital Construction to be more flexible and
14 to get this process moving?

15 A. I think it was more of an
16 acknowledgment of the fact that many of these
17 requirements were not going to pass testing
18 no matter what color we painted them, no
19 matter how we classified them, that it
20 wouldn't change the fact that they were not
21 going to perform the way the contract
22 intended them to perform.

23 The functionality was not going to
24 spontaneously emerge because we said a test
25 hadn't failed. So I think the path forward

1 SEAN RYAN

2 with?

3 A. According to the sign-in sheet,
4 this is a monthly all-agency meeting that we
5 were doing at that time at Penn Plaza.

6 Q. What was the purpose of the monthly
7 all-agency meetings?

8 A. All-agency status update,
9 coordination, so on.

10 Q. Would Capital Construction normally
11 provide a status of what happened previous
12 and going forward?

13 A. Yes.

14 Q. This is a meeting that you
15 participated in then on April 20, 2009?

16 A. Yes.

17 Q. Turn to page 38, as we just
18 referenced, it says, The FAT showstoppers are
19 closed, and it lists published-subscribe,
20 Lenel, data of segmentation and maintenance.

21 Do you see that?

22 A. Yes.

23 Q. Do you recall Capital Construction
24 reporting that the FAT showstoppers had been
25 closed as of this April 20, 2009 all-agency

1 SEAN RYAN

2 meeting?

3 MS. HECHTKOPF: Objection.

4 A. I don't recall the specific
5 meeting. Obviously, I was in attendance
6 because I signed the sign-in sheet.

7 Q. And would you agree with me that
8 Capital Construction reported that the FAT
9 showstoppers are closed at this meeting?

10 MS. HECHTKOPF: Objection.

11 A. I would agree that written on this
12 slide are the words, The FAT showstoppers are
13 closed, yes.

14 Q. Do you recall any objections to the
15 statement that were written on that slide 38
16 about the FAT showstoppers being closed?

17 A. I don't recall the conversations
18 during this meeting.

19 Q. Does this refresh your recollection
20 that the four FAT showstoppers that we
21 discussed earlier in your deposition were, in
22 fact, closed?

23 MS. HECHTKOPF: Objection.

24 A. It does not.

25 Q. Would you have any reason to

1 SEAN RYAN

2 believe they were not closed as of April 20,
3 2009, based on what is written here by
4 Capital Construction, who was the manager of
5 the project?

6 MS. HECHTKOPF: Objection.

7 A. They aren't closed as of today, so
8 I know that they weren't closed as of April
9 20, 2009.

10 Q. Did you recall raising any
11 disagreement with the slides, as written,
12 during that meeting?

13 A. Again, I don't recall what my
14 response was during that meeting.

15 Q. Do you have any recollection of
16 discussing after the fact that this slide was
17 wrong, shortly after the meeting?

18 A. I don't recall what my response was
19 at the time.

20 Q. Why is it you say publish-subscribe
21 is not closed as of today?

22 A. At Metro-North, we still do not
23 have this publish-subscribe function as
24 service.

25 Q. How would you describe the

1 SEAN RYAN

2 publish-subscribe function?

3 A. It's basically a software
4 capability where, I know this is not the
5 technical explanation but my words, sort of
6 like a switchboard function where people
7 subscribe to certain messages, the messages
8 are transmitted to people who subscribe to
9 them.

10 Q. What is your understanding of the
11 problem that's still exists today why this
12 hasn't been resolved since Lockheed Martin's
13 termination?

14 A. Frankly, I don't recall technically
15 what the problem was with it in 2009, other
16 than it wasn't provided.

17 Q. And is this something that has been
18 included as a requirement on the AAESP
19 project?

20 A. No, it is not because, as I said,
21 we did not -- the AAESP project is -- was
22 designed to simply close out the work that
23 Lockheed Martin had begun.

24 Q. Didn't you say this was part of the
25 work that Lockheed Martin had begun?

CERTIFICATE

I HEREBY CERTIFY that the witness
was duly sworn by me and that the deposition
is a true record of the testimony given by
the witness.

Leslie Fagin,
Registered Professional Reporter
Dated: April 17, 2012

(The foregoing certification of
this transcript does not apply to any
reproduction of the same by any means, unless
under the direct control and/or supervision
of the certifying reporter.)

ACKNOWLEDGMENT OF DEPONENT

I, , do hereby
certify that I have read the foregoing pages,
and that the same is a correct transcription
of the answers given by me to the questions
therein propounded, except for the
corrections or changes in form or substance,
if any, noted in the attached Errata Sheet.

WITNESS NAME DATE

Subscribed and sworn
to before me this
day of , 2011.

My commission expires:

Notary Public